

Message Text

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ACTION EA-14

INFO OCT-01 ADP-00 CIAE-00 DODE-00 PM-07 H-03 INR-10 L-03

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TO SECSTATE WASHDC 7683

INFO CINCPAC

S E C R E T SECTION 1 OF 2 MANILA 9962

CINCPAC FOR POLAD

E.O. 11652: GDS

TAGS: PINS, PINT, PFOR

SUBJECT: ACTING SECRETARY JUSTICE MACARAIG COMMENTS ON AQUINO

TRIAL

REF: (A) MANILA 9766

(B) MANILA 9830

(C) MANILA 9886

(D) MANILA 9927

BEGIN SUMMARY: MACARAGI STATES GOP CAUGHT OFF-GUARD BY AQUINO STRATEGY OF REFUSING TO DEFEND HIMSELF. SUPREME COURT WILLINGNESS TO ENTERTAIN AQUINO PETITION ALSO UNEXPECTED. GOP STUMBLING IN CASE PARTLY ATTRIBUTABLE TO DESIRE TO GIVE EVERY APPEARANCE THAT AQUINO GETTING SCRUPULOUSLY FAIR TREATMENT. MACARAIG CONFIDENTLY EXPECTS CIVILIAN COURTS TO BE GIVEN AQUINO CASE, WHICH HE EXPECTS WILL BE PRECEDENT FOR CIVIL HANDLING SIMILAR CASES. GOP CONVINCED IT HAS EVIDENCE TO CONVICT AQUINO; HOWEVER, INTEGRITY MAIN PROSECUTION WITNESSES COULD BE SHAKEN IN NORMAL CIVILIAN COURT, SO POSSIBILITY THAT AQUINO MAY FINALLY END UP, STILL, BEFORE MILITARY TRIBUNAL SHOULD NOT BE DISCOUNTED. AQUINO'S STRATEGY HAS CALLED INTO

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LEGAL QUESTION VERY STRUCTURE OF NEW SOCIETY AND GOP

INITIAL RESPONSE HAS BEEN MALADROIT. END SUMMARY.

1. ACTING POLITICAL COUNSELOR CALLED ON ACTING SECRETARY OF JUSTICE MACARAIG TO DISCUSS AQUINO CASE. MACARAIG WAS ASKED TO COMMENT ON SEEMING GOVERNMENT CONFUSION IN CASE. HE LAUGHED AND SAID THAT GOP HAD BEEN CAUGHT OFF GUARD AND HAD PROBABLY BEEN OVERCONFIDENT. HE SAID, HOWEVER, THAT ALTHOUGH AQUINO HAD WON FIRST POINTS, GOP WOULD WIN FIGHT. HE VOLUNTEERED THEREUPON TO EXPLAIN WHAT HAD TRANSPIRED IN AQUINO TRIAL TO DATE.

2. RECEIPT OF PETITION FRIDAY AUG 24 TO SUPREME COURT BY AQUINO COUNSEL, REQUESTING INJUNCTION AGAINST HOLDING MILITARY TRIAL FOR AQUINO CAME UNEXPECTEDLY LATE. PROSECUTION WAS FURTHER THROWN OFF BALANCE BY SUPREME COURT'S ANNOUNCEMENT ON AUG 25 THAT IT WOULD HOLD HEARING ON PETITION SUNDAY AUG 26. MACARAIG EXPLAINED THAT FOUR OTHER DETAINEES HAD MADE EARLIER PETITIONS ASKING SUPREME COURT FOR INJUNCTION AGAINST MILITARY TRIALS ON CONSTITUTIONAL GROUNDS AND THESE PETITIONS HAD BEEN DENIED. THEREFORE, ALACRITY WITH WHICH COURT HAD RESPONDED TO AQUINO PETITION WAS NOT FORESEEN. MACARAIG ATTRIBUTED COURT'S WILLINGNESS TO BE RESPONSIVE IN AQUINO CASE TO MARAL ASCENDENCY WHICH FORMER SENATOR LORENZO TANADA, AQUINO'S COUNSEL, EXERCISES OVER JUSTICES, ALL OF WHOM RESPECT TANADA AND WORKED UNDER HIM IN HIS EARLIER YEARS IN GOVERNMENT.

3. THUS, AT HEARING ON AUG 26, COURT SHOWED STRONG DEFERENCE TO TANADA AND RECOMMENDED POSTPONEMENT OF ONE WEEK OF MILITARY TRIAL IN ORDER TO DELIBERATE ON ISSUES RAISED IN AQUINO PETITION, PARTICULARLY ALLEGATION OF DENIAL OF DUE PROCESS. MACARAIG STRESSED THAT HEARING HAD BEEN OPEN SESSION AND TANADA HAD NOT EVEN ASKED SPECIFICALLY FOR POSTPONEMENT. PROSECUTION REQUESTED OPPORTUNITY TO REFER COURT'S RECOMMENDATION FOR POSTPONEMENT TO PRESIDENT MARCOS AND MACARAIG HIMSELF PHONED MARCOS TO EXPLAIN WHAT HAD TRANSPIRED AND TO CLEAR CONCEPT OF POSTPONEMENT. MARCOS ACCEPTED TURN OF EVENTS WITH GRACE AND CONFIDENCE AND CONCURRED. PROSECUTION WENT

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INTO TRIAL EXPECTING DEFENSE TO ASK FOR POSTPONEMENT.

4. AT AUG 27 OPENING OF TRIAL BEFORE MILITARY COMMISSION, EXPECTATION OF PROSECUTION WAS THAT AQUINO'S COUNSEL WOULD DULY MAKE MOTION FOR POSTPONEMENT WHICH WOULD BE AGREED TO AND AQUINO WOULD BE ALLOWED TO MAKE STATEMENT. HOWEVER, AQUINO'S DISMISSAL OF HIS COUNSEL CREATED CONFUSION, COMPOUNDED BY ERROR OF BG SYJUCO, PRESIDING JUDGE

OF MILITARY COMMISSION, IN ALLOWING MILITARY DEFENSE COUNSEL ALSO TO WITHDRAW FROM CASE. MACARAIG SAID SYJUCO SHOULD HAVE REQUIRED AQUINO TO ACCEPT MILITARY COUNSEL WHO COULD THEN HAVE REQUESTED POSTPONEMENT OF PROCEEDINGS IN ACCORDANCE WITH SUPREME COURT WISHES.

5. MACARAIG ATTRIBUTED SYJUCO'S TIMOROUSNESS TO FIRM INSTRUCTIONS COMMISSION HAD RECEIVED TO SHOW EVERY COURTESY TO AQUINO AND TO AVOID ANY APPEARANCE THAT AQUINO BEING PROSECUTED BEFORE KANGAROO COURT. GOP VERY CONSCIOUS OF EXTENSIVE MEDIA INTEREST IN TRIAL, PARTICULARLY FOREIGN MEDIA, AND WAS DETERMINED THAT TRIAL BE CONSIDERED FAIR AND IMPARTIAL.

6. MACARAIG AND DEFENSE SECRETARY ENRILE CONFERRED WITH PRESIDENT MARCOS ON AUG 28 TO REASSESS STRATEGY. PRESIDENT'S REACTION TO EVENTS WAS THAT SINCE AQUINO HAD QUESTIONED CHARGES AGAINST HIM AND REJECTED MILITARY TRIBUNAL, THE CHARGES SHOULD BE REVIEWED BY AN IMPARTIAL COMMITTEE (REF D) AND TRIAL WOULD BE MADE CIVIL RATHER THAN MILITARY PROCEEDING. MACARAIG SAID GOVERNMENT THOROUGHLY CONFIDENT THAT SUCH COMMITTEE WILL FIND PRIMA FACIE EVIDENCE FOR PROCEEDING AGAINST AQUINO. HOWEVER, MARCOS HAS ISSUED STRONG INSTRUCTIONS THAT AQUINO AFFAIR MUST BE HANDLED WITH UTMOST SCRUPULOUSNESS AND FAIRNESS SO THAT DOMESTIC OR FOREIGN CRITICISM CAN BE AVERTED.

7. WHEN EVENTUAL CIVIL PROCEEDING UNDERTAKEN AGAINST AQUINO, JUSTICE DEPARTMENT WILL TAKE MORE DIRECT ROLE THAN IT HAD BEEN ABLE TO TAKE IN MILITARY PROCEEDINGS. HOWEVER, PROSECUTION STAFF WILL REMAIN THE SAME BECAUSE PROSECUTORIORS ACTUALLY JUSTICE DEPARTMENT EMPLOYEES, WHO TEMPORARILY PRESSED INTO MILITARY SERVICE FOR PURPOSE OF MILITARY

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TRIAL. MACARAIG NOTED MILITARY HAD BEEN VERY JEALOUS OF THEIR PREROGATIVES IN HANDLING OF AQUINO CASE AND JUSTICE DEPT HAD ONLY BEEN ABLE ADVISE IN PAST. (IN EARLIER CONVERSATION WITH EMBOFF, BG RAMOS, PC CHIEF, EXHIBITED HIGHLY NEGATIVE REACTION TO REMOVAL OF CASE FROM MILITARY TRIBUNAL.)

8. ACTING JUSTICE SECRETARY SAID THAT MILITARY TRIBUNAL AQUINO IMBROGLIO WOULD LEAD INEVITABLY TO FILING OF PETITIONS BY OTHER POLITICAL DETAINEES. PRESIDENT MARCOS HAS GIVEN INSTRUCTIONS TO SECRETARY ENRILE TO HAVE CASES DESERVING OF CIVIL PROCEEDINGS SEPARATED OUT FROM CASES INVOLVING LESSER OFFENSES WHICH MILITARY TRIBUNALS CAN AND SHOULD HANDLE. MACARAIG SAID PRESIDENTIAL DECREES AND GENERAL ORDERS HAD BEEN TOO EXPANSIVELY DRAFTED WHEN MARTIAL LAW DECLARED AND MILITARY TRIBUNALS HAD BEEN

GIVEN EXCESSIVE RESPONSIBILITIES, DESPITE FACT MILITARY
DID NOT HAVE LEGAL RESOURCES TO HANDLE MILITARY TRIBUNAL
CASELOAD.
PURNELL

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9. COMMENT: MACARAIG IS A CANDID, DIRECT MAN AND HIS
ACCOUNT SOUNDS PLAUSIBLE. HE TREATED THE CONFUSION WHICH
HAD OCCURRED TO DATE IN THE AQUINO TRIAL HUMOROUSLY; HOW-
EVER, HE MADE IT VERY PLAIN THAT THE GOVERNMENT HAS, IT
BELIEVES, AN EXTREMELY STRONG CASE AGAINST AQUINO--WHICH
IT EXPECTS TO WIN. MACARAIG'S OPTIMISM MAY BE EXCESSIVE,
HOWEVER, BECAUSE GOP CASE AGAINST AQUINO HINGES LARGELY ON
TESTIMONY OF HIS ALLEGED CO-CONSPIRATORS NPA COMMANDERS
"MELODY" AND "PUSA." EMBASSY BELIEVES INTEGRITY OF THIS
TESTIMONY COULD BE SHAKEN IN A NORMAL CIVILIAN COURT TRIAL.
THUS, WE DO NOT DISCOUNT POSSIBILITY GOVT WILL EVENTUALLY
DECIDE TO GO MILITARY TRIBUNAL ROUTE WHERE THERE ARE LESS
RIGID RULES OF COURT AND EVIDENCE.

10. AQUINO CASE HAS CALLED INTO LEGAL QUESTION THE STRUCTURE
OF THE NEW SOCIETY UNDER MARTIAL LAW AND INITIAL RESPONSE
OF MARCOS ADMINISTRATION HAS BEEN MALADROIT.
PURNELL

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